HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting**)**
(Chapter VIII Rule 32 (2) (b**)**

Description of the Case.

Criminal Appeal No. 719 of 2001
(Old No. 1973 of 1984)

Gangu Singh @ Ganga Singh …Appellant

Versus

State …Respondent.

Approved for reporting.

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Not approved for reporting.

Date of Decision 23rd December, 2004.

Initial of Judge.

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HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 719 of 2001
(Old No. 1973 of 1984)

Gangu Singh @ Ganga Singh
S/o Sri Sitab Singh
R/o Village Charakot
Patti Bangarhsyan
District Pauri Garhwal …Appellant

Versus

State …Respondent.

Sri R.P. Nautiyal, learned counsel for the appellant,
Sri G.S. Sandhu, learned A.G.A. for the State.

Coram: Hon'ble P.C.Verma,J.
Hon'ble B.C.Kandpal,J.

(Delivered by Hon'ble B.C.Kandpal, J.)

1. This criminal appeal arises out against the judgment and order dated 28.06.1984 passed by Sessions Judge, Pauri Garhwal in Sessions Trial No. 1 of 1982 convicting the accused/appellant under Section 302 I.P.C. and sentencing him to life imprisonment.

2. Brief facts of the prosecution case are that on 23.07.1981, Satya Prasad Bhatt of village Salda, Patti Bangarhsyun circle No. III of District Pauri Garhwal sent a written report (Ex. Ka. I) to Naib Tahsildar, Pauri Garhwal stating therein that on 23.07.1981 five boys of his village, namely, Dinesh Singh, Vikram Singh, Jagdish Lal, Sajjan Singh and Promod Kumar had gone to bring mangoes in the bounds of village Charakot. In the evening one Dinesh Singh came to the

village and he informed that one Pramod Kumar S/o Dayal Singh of his village was murdered by the accused Gangu Singh by means of stones. When the complainant reached at the spot he found the dead body of Promod Kumar lying at Gadhera in Charokot. As it was the season of rains so the complainant kept the aforesaid dead body in the field above the aforesaid Gadhera so that it may not be swept away in the following water.

3. On the basis of written report a Chic F.I.R. (Ex. Ka. 4) was prepared and the case was registered against the accused/appellant Gangu Singh @ Gange Singh.

4. The inquest on the body of the deceased was prepared and thereafter the body of the deceased was sent for post mortem examination. The post mortem on the body of the deceased Promod Kumar was conducted on 25.07.1981.

5. The Investigating Officer recorded the statement of the witnesses, prepared the site plan and after completion of the investigation submitted the chargesheet the accused/appellant Gangu Singh @ Ganga Singh.

6. After submission of chargesheet the accused Gangu Singh @ Ganga Singh was committed to the Court of Sessions and the learned Sessions Judge, Pauri Garhwal on 29.06.1982 framed the charge under Section 302 of the Indian Penal Code against him. The accused denied of the charge levelled against his and claimed his trial.

7. The prosecution in order to bring the guilt of the accused to home produced Dinesh Singh (P.W.1), Vikram Singh (P.W.2), Satya Prasad (P.W.3), Surat Singh (P.W.4), Jagdish Prasad (P.W.5), Prem Lal (P.W.6), Dr. D.P. Singh (P.W.7) and Ram Swarup (P.W.8).

8. After the evidence of the prosecution was over, the statement of the accused/appellant was recorded under Section 313 of the Criminal Procedure Code. The accused persons did not adduce any evidence in their defence.

9. The learned trial court, after hearing learned counsel for the parties and having perused the entire evidence on record convicted the accused under Section 302 of I.P.C. and thereon sentenced him for life imprisonment vide judgment and order dated 28.06.1984.

10. Feeling aggrieved by the impugned judgment and order, the convict Gangu Singh @ Ganga Singh preferred the appeal before the Allahabad High Court, which has been transferred to this court after creation of new State of Uttaranchal according to law.

11. We have heard the learned counsel for the parties and perused the record.

12. Learned counsel for the appellant has first of all argued that the accused was aged less than 16 years on the date of occurrence, therefore, he could not have been tried by the Sessions Judge and the imprisonment for life could not be awarded against him. He has invited out attention towards

some documents which have been produced by the prosecution before the trial court in order to show that the age of the accused was below 16 years on the date of occurrence. He has also cited before us *AIR 1981 Supreme Court 2037 Raghbir Vs. State of Haryana* and *AIR 1982 Supreme Court 806 Munna Vs. State of U.P.* in support of his contention.

13. We have given our anxious consideration on the argument advanced by the learned counsel for the accused/appellant.

14. It is important to mention here that Ex. Ka. 13 is a document pertaining to the arrest of the accused prepared by the Patwari Ram Swarup (P.W.8) – Investigating Officer and this document shows that when the accused – Gangu Singh @ Ganga Singh was arrested his search was made and the age of the accused as has been mentioned in that document, is 14 years. This document has been prepared on 25.07.1981 i.e. only after two days of the occurrence. Therefore, it is quite clear that the age of the accused/appellant, on the date of occurrence was below 16 years. Further the statement under Section 313 Cr.P.C. which was recorded by the learned Sessions Judge before the trial court indicates that the learned Sessions Judge has also made an endorsement that the accused 'stated' his age about 16 years but by appearance, he appears to be less than 18 years of age. This endorsement made by the learned Sessions Judge attaches an importance as the statement under Section 313 Cr.P.C. was recorded on 30.04.1984 is approximately after three years of occurrence and on the date of this statement the age of the accused which appeared to the

learned Sessions Judge was less that 18 years. Therefore, it is evidently clear that the age of the accused/appellant on the date of the occurrence was certainly less than 16 years.

15. The papers, which have been filed by the prosecution itself show that the accused/appellant was Juvenile on the date of the occurrence. Therefore, his case should not have been dealt with as a Sessions trial.

16 The Hon'ble Supreme Court in the case report in *AIR 1981 Supreme Court Page 2037 (supra)* has clearly observed that *"Section 27 of the Cr.P.C. in not 'a specific provision to the contrary' within the meaning of Section 5 of the code."* It has further observed that "what Section 27 contemplates is that a child under the age of 16 years may be tried by a Chief Judicial Magistrate of any Court specially empowered under the Children Act, 1960.

17. The Hon'ble Apex Court has further discussed the relevant provision of the Cr.P.C. 1973 with which they were directly concerned in order to decide this point and those provisions are as follows:-

> *" Section 4 reads:*
>
> *(1) All offences under the Indian Panel Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.*

(2) All offences under any other law shall be investigated, inquired into, tied and otherwise dealt with accordingly to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

Section 5 reads:

Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

Section 27 reads:

Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of sixteen years may be tried by the Court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960, or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders."

18. The Hon'ble Apex Court on the basis of the aforesaid provision has opined that "Section 27 is not a specific

provision to the contrary within the meaning of Section 5 of the Court. The intention of the Parliament was not to exclude the trial of the delinquent children for offences punishable with death or imprisonment for life, inasmuch as Section 27 does not contain any expression to the effect “notwithstanding anything contained in any Children Act passed by any State Legislature.”

19. In view of the aforesaid observation made by the Hon’ble Supreme Court, we are of the view that what Section 27 contemplates is that a child under the age of 16 years may be tried by a Chief Judicial Magistrate or any Court specially empowers under the Children Act, 1960.

20. We are thus of the view that Section 27 of the Code of Criminal Procedure is merely an enabling provision which does not express any contrary intention to undo the saving provided in Section 5 of the Code.

21. In view of the above, we allow the appeal and set aside the conviction and sentence imposed upon the accused/appellant and quash the entire trial.

22. We accordingly direct that the appellant shall be dealt with in accordance with provision of U.P. Children Act (1 of 1952).

(B.C. Kandpal, J) **(P.C. Verma, J)**

23.12.2004
ASWAL